

Law Society

Proposals for a 21st Century Justice System – green paper

A response by the Association of Personal Injury Lawyers

December 2023



## Introduction

APIL is grateful for the opportunity to respond to the Law Society's green paper with proposals to reform the civil justice system.

APIL can see considerable advantages to digitisation, however, digital reform is complex and historically has not been a great success in the PI sector as the most recent reforms in the low-value road traffic collisions space and online courts show. Reforms must have a user-focused approach, be inclusive and provide the necessary user support. Reform should focus on the user's needs, learn from their experiences and be rigorously tested.

APIL supports the development of an online diagnostic tool to support individuals and small businesses in identifying and resolving their legal issues. The 'Solutions Explorer' has the potential to bridge the gap in accessibility to legal information and services given that many individuals do not seek legal help due to cost barriers or lack of access to legal professionals. However, this should be designed and developed with careful consideration of various factors, such as accuracy of information, user-friendliness, and ensuring that the tool does not aim to replace the need for legal advice which is specific to the individual needs and circumstance of a particular legal matter.

APIL has responded to the questions within our remit.

### **Q1. Where should an online portal like the 'Solutions Explorer' be hosted to foster trust and address the concerns raised by legal services consumers?**

APIL believes that to address the independence and impartiality concerns described in the green paper, the 'Solutions Explorer' (the platform) should be hosted in His Majesty's Courts and Tribunal Service (HMCTS). This would help build public trust in the platform. However, APIL believes that for HMCTS to be the appropriate place to host this platform, significant investment would be needed in relation to the development of IT to ensure that the platform actually works and is delivering its aim of helping consumers. Our members report that currently, the simple E-filing function on the HMCTS website is not user-friendly at all. If easy day-to-day tasks for legal representatives are not straightforward on the HMCTS website, we are concerned that the same could happen to the public when using the Solutions Explorer, which on its own requires more technology and planning than the E-filing function referred to above.

We suggest that extensive user testing should take place before the platform is launched. It would be illogical to present a platform to the public that is not easy to use and as such does not deliver its aim. In particular, considering that people with legal disputes are often stressed about the complexity of the legal system or about not getting redress, and are also often confused about the legal landscape and processes. It is key to ensure that this platform will indeed be beneficial to users and not another constraint or reason for distress when pursuing their legal rights.

## **Q2. Which areas of law would be the best candidates for early incorporation into the 'Solutions Explorer'?**

APIL has no specific suggestions on this. However, we believe that for better results, the Solutions Explorer should be reserved for non-contentious areas of law.

We believe that personal injury should be excluded from early incorporation into the platform. In Personal Injury claims, the claimant is in a vulnerable position due to the physical and/or psychological harm they have suffered. The claimant will often be dealing with pain and financial strain due to loss of income, which results in emotional distress. Further, there is often a power imbalance between claimants and the parties they are claiming against, such as insurance companies, large corporations, or Government bodies. Further, PI claimants rely on compensation for their recovery, adding to their stress and vulnerability, especially if they feel their future well-being depends on a positive resolution. We believe that these factors combined, place PI claimants in a vulnerable position, requiring support and legal guidance at the earliest opportunity to ensure fair treatment and adequate compensation for their injuries. With that said, APIL recommends that PI claims should not be included in the early roll-out of the platform.

## **Q3. To what extent will the 'Solutions Explorer' help to address the unmet legal need of individuals on low incomes and small businesses?**

The Solutions Explorer has the potential to bridge the gap in accessibility to legal information and services given that many individuals do not seek legal help due to cost barriers or lack of access to legal professionals. The platform will also have widespread reach, as it will be easily accessible regardless of geographical location, which will be key for those in remote areas where access to legal assistance might be limited.

It is essential to note that online tools should be designed and developed with careful consideration of various factors, such as accuracy of information, user-friendliness, and ensuring that the tool does not aim to replace the need for legal advice. While the platform can be a valuable tool in addressing unmet legal needs, it will not substitute the expertise and personalized guidance provided by legal professionals, who should be involved in the development of the platform. The questions and information requests on the Solutions Explorer must be completely accurate – if not, instead of helping individuals with their legal issues, this would create more uncertainty and advise them to pursue the wrong route to redress.

Digital exclusion must be tackled head-on. Whilst the trend is towards digital capability, we are not yet in a position where such systems are easily accessible to all. Not everyone has access to the internet or technology. For instance, individuals in rural areas, low-income households, or marginalized communities might not have the necessary technology, and even if individuals have access to technology, they may lack the skills or familiarity to navigate online platforms and tools effectively.

The platform must also include accessibility features to ensure equitable access for all users. Any new digital reforms to the court system must include in-person support, so that people with any disability or who cannot access digital services, have equal access to the justice system. We recommend that the Solutions Explorer be complemented with alternative methods of access, such as helplines, in-person assistance, or partnerships with community organisations.

**Q7. What other changes could make online court systems work better for a) professional users and b) the public?**

APIL supports the solutions put forward in the green paper, namely that a minimum service level standard should be introduced across all existing online court systems. We also agree that there is a need for robust data collection and sharing of users' experiences within the court system to improve transparency.

We believe that improving the online court system for both professional users and the public requires a user-centric approach, including continuous stakeholder engagement and feedback to identify areas for improvement and enhance the overall effectiveness of the system. The following factors are essential considerations for the implementation of digital reforms:

- Proper engagement with the profession.
- Extensive user testing.
- User feedback from a range of different stakeholders.
- Full integration with law firm's systems.

Further, for professional users, it is key to ensure compatibility between the software used by legal professionals, such as case management software, and online court systems. This would reduce the financial burden for legal professionals, their firms and by extension the clients they serve. There is significant discontent amongst claimant representatives that the Official Injury Claims Portal (OICP) is not compatible with the case management systems of their law firms. Our members have informed APIL that this has caused problems along every step of the claims process. Firms had to change their systems and incur additional costs to adapt to the portal. In future reforms, there needs to be greater consideration of the hidden cost of reform for solicitors implementing these systems. There are technical workstreams and IT workstreams that have to be looked at and these costs are not limited to initial outlay.

Considering public users, online court systems must have a user-friendly interface with clear instructions, plain language information and simple navigation features. The language used in the accompanying guidance must also be clear and simple and there should also be a FAQs section on the website. The OICP has shown the importance of this. APIL data analysis has found that for every ten claims that are submitted by unrepresented claimants, six calls are being made to the OICP's support centre. This suggests that those without legal support are still struggling to grapple with the system more than two years after its launch. Such a significant number of calls for support indicates that the OICP is not the easy-to-use system promised; a significant percentage of unrepresented claimants are struggling with one or more aspects of the process; the existing guidance is not clear enough, causing claimants to call for assistance. This becomes particularly problematic when considering that the system's users are already suffering physical pain, emotional distress and financial uncertainty from their injuries and, on top of that, have to use a flawed and complex system that is not user-friendly.

APIL believes that the implementation of the OICP provides useful lessons, which if learned will improve the rollout of future digital platforms.

**Q8. What support and assurance do solicitors need to feel confident offering unbundled services?**

APIL believes that in personal injury cases, there are specific challenges that might limit the effectiveness of unbundled services.

Personal injury cases will often involve various legal and medical issues. Unbundled services will not be sufficient for cases requiring in-depth legal analysis, comprehensive support, and complex negotiations. Further, cases involving severe injuries, multiple defendants, or where liability is in dispute require continuous legal advice rather than limited, piecemeal services. It is often also the case that a claim appears straightforward at the outset but then evolves into a more complex claim. Even if clients only used unbundled services for what appears to be a simple claim, they might be faced with complexity issues later on and require the instruction of a solicitor.

From the legal professional's perspective, this could give rise to issues concerning solicitors' professional indemnity cover and in relation to accountability as this fragmented approach could lead to inconsistencies or misunderstandings in different legal tasks performed by various professionals or by the claimants themselves. We believe that in personal injury, claimants need continuous legal representation to ensure their interests are fully protected throughout the entire legal process. In particular, given that, as mentioned above, there is often a power imbalance between claimants and the parties they are claiming against.

**Q10. How can the legal and insurance industries raise greater awareness among LEI policy holders of the existence and scope of the coverage of their policy?**

Our members report that it is becoming increasingly impractical to rely on LEI insurance given how challenging it is to access the funds. When attempting to obtain legal expense insurance, often the number of conditions attached to the policy makes it almost unfeasible. The process of accessing that funding seems to consume more time and effort than the actual benefit it provides. There are numerous specific exclusions imposed, such as the solicitor having to adhere to specific hourly rates and requiring pre-approval before incurring any expenses.

**Q11. To what extent could a subscription-based service offering early legal advice address unmet legal need among those not eligible for legal aid?**

APIL supports that the Society looks into the possibility of facilitating the creation of a new solicitors' consortia to run a legal advice helpline. The helpline should be available to the public as a low-cost service, with the option to pay for single-use advice.

**Q12. Which other organisations or representatives should be included as members of a Costs Council?**

We believe that along with consumer bodies, claimant representative organisations should also be included as members of a Costs Council.

**Q13. How could the current Civil Legal Advice helpline be improved? Should it continue to be delivered as a national service, or reformulated to local provision?**

We believe that the helpline should remain a national service. Regionalizing the service would create the risk of postcode lotteries, where certain locations might have a better

service than others. It is also easier to ensure a uniform approach and provision of advice if the service is provided nationally.

We have some broader comments about the current provision of legal aid.

APIL supports the suggestion in the consultation paper that the Legal Aid Agency (LAA) should publish an annual report focused on how the LAA has delivered access to justice to increase transparency. We also agree that the LAA should adopt a more flexible approach to contracts. Our members report a series of issues, including:

- Certificates being inconsistently granted or rejected for arbitrary reasons, such as timetables.
- Decisions on whether legal aid should be granted being refused because of arbitrary cutoffs (despite cases being referred to the early notification scheme).
- Difficulties when trying to call the LAA - simply being put through to customer services, and unable to speak to anyone with knowledge of the case. The LAA loses important documents, documents go to the wrong department, calls are not returned, and staff dealing with the case at the Agency do not understand the information that they get, often asking for the same documents repeatedly.
- The rates allowed for expert fees and the legal aid hourly rate are currently too low and must be reviewed. The amounts assigned to each stage of the case on the block of funding have not been revisited in around 15 years and should also be reviewed.

Being awarded a legal aid franchise was previously a hallmark of quality, but due to the issues stated above, it is becoming increasingly the case that firms pursue cases under a conditional fee agreement, instead of trying to secure funding through legal aid, with the accompanying drawbacks such as having to take money out of the clients' damages to fund disbursements.

#### **Q15. Are there risks that we haven't anticipated or identified in this paper?**

One concern is the fact that the Solutions Explorer will signpost users to solicitors for negotiation. Whilst it is welcomed that individuals are signposted to receive legal advice, we believe that the list of solicitors needs to be carefully considered. How would this be presented to individuals in a matter that is not benefiting a certain firm? This might mean that individuals do not get full freedom of choice of solicitor in the same way. Even if this is sorted alphabetically, it might still benefit those on top of the list. APIL believes that for better results, the Solutions Explorer should be reserved for non-contentious areas of law at least until it is well implemented, and users' feedback has been received, analysed and addressed.

Any queries about this response should be, in the first instance, directed to:

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